

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

ETHAN ROBERT WOODARD,
on behalf of M.W., a minor child,

Plaintiff,

v.

No. 1:22-cv-00405-JCH-JHR

UNITED STATES DEPARTMENT OF JUSTICE,
UNITED STATES DEPARTMENT OF HEALTH AND HUMAN SERVICES, and
NEW MEXICO CYFD,

Defendants.

MEMORANDUM OPINION AND ORDER OF DISMISSAL

Pro se Plaintiff's Sealed Complaint indicates that Plaintiff is bringing this action "on behalf of [M.W.], a minor child." Sealed Complaint at 1, Doc. 1, filed May 25, 2022. Plaintiff alleges he is the biological father of M.W. and that New Mexico CYFD failed to keep M.W. safe from harm and abuse. There are no factual allegations regarding Defendants United States Department of Justice and United States Department of Health and Human Services. Plaintiff seeks \$5 million "for the abuse and neglect" M.W. endured. Complaint at 3.

United States Magistrate Judge Jerry H. Ritter notified Plaintiff that it appears this case should be dismissed for failure to state a claim because:

Plaintiff is bringing this case on behalf of his daughter M.W. "A litigant may bring his own claims to federal court without counsel, but not the claims of others." *Fymbo v. State Farm Fire & Cas. Co.*, 213 F.3d 1320, 1321 (10th Cir. 2000); *see also Kanth v. Lubeck*, 123 Fed.Appx. 921, 923 n.1 (10th Cir. 2005) (stating "as a non-lawyer parent, appearing *pro se*, [plaintiff] may not represent his minor children in federal court") (citing *Meeker v. Kercher*, 782 F.2d 153, 154 (10th Cir. 1986) (holding that "under Fed. R. Civ. P. 17(c) and 28 U.S.C. § 1654 [stating parties may plead and conduct their own cases personally or by counsel], a minor child cannot bring suit through a parent acting as next friend if the parent is not represented by an attorney"))).

The claims against Defendants United States Department of Justice and United States Department of Health and Human Services should be dismissed for failure to state a claim because there are no factual allegations regarding Defendants United States Department of Justice and United States Department of Health and Human Services. A complaint must "give the defendant fair notice of what the . . . claim is and the grounds upon which it rests." *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007); *Nasious v. Two Unknown B.I.C.E. Agents, at Arapahoe County Justice Center*, 492 F.3d 1158, 1163 (10th Cir. 2007) ("[T]o state a claim in federal court, a complaint must explain what each defendant did to him or her; when the defendant did it; how the defendant's action harmed him or her; and, what specific legal right the plaintiff believes the defendant violated.").

The claims against Defendant New Mexico CYFD should be dismissed for failure to state a claim pursuant to 42 U.S.C. § 1983. "It is well established that arms of the state, or state officials acting in their official capacities, are not 'persons' within the meaning of § 1983 and therefore are immune from § 1983 damages suits." *Hull v. State of New Mexico Taxation and Revenue Department's Motor Vehicle Division*, 179 Fed.Appx. 445, 446 (10th Cir. 2006).

Order to Show Cause, Doc. 8, filed June 2, 2022. Judge Ritter ordered Plaintiff to show cause why the Court should not dismiss this case and to file an amended complaint. Judge Ritter also notified Plaintiff that failure to timely show cause and file an amended complaint may result in dismissal of this case. Plaintiff did not show cause or file an amended complaint by the June 23, 2022, deadline.

The Court finds that Plaintiff's Complaint fails to state a claim upon which relief can be granted for the reasons stated by Judge Ritter. Plaintiff has not shown cause why the Court should not dismiss this case, and has not filed an amended complaint or otherwise responded to Judge Ritter's Order to Show Cause. The Court therefore dismisses this action for failure to state a claim upon which relief may be granted.

IT IS ORDERED that this case is **DISMISSED without prejudice**.



SENIOR UNITED STATES DISTRICT JUDGE